

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 184 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAJUBHAI BACHUBHAI RANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR MC KAPADIA for Petitioner

MR UR BHATT learned AGP for respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/06/96

ORAL JUDGEMENT

The petitioner is the son of the detenu Vasantiben Bachubhai Rana who is detained by the Commissioner of Police, Vadodara City, Vadodara under section 3(1) of the Prevention Anti Social Activities Act, 1985 (hereinafter referred to as 'The PASA Act'). The petitioner has challenged the said order of detention dated 3.11.1995.

In the grounds of detention supplied to the detenue, the detaining authority has placed reliance on five prohibition cases registered against the detenu under sec. 66(1)(B), 65(e) and sec. 81 of the Bombay

Prohibition Act. Out of these five prohibition cases, 4 are pending trial and one is at the investigation stage. Over and above these prohibition cases, the detaining authority has placed reliance on the statements of three witnesses regarding the alleged incidents dated 17.9.1995, 22.9.1995 and 3.9.1995. Considering this material against the detenu, the detaining authority was of the view that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr. Kapadia learned advocate for the petitioner has raised number of contentions. However, it is not necessary to deal with each of them as the petition can be disposed of on the first contention itself. Mr. Kapadia has submitted that the subjective satisfaction arrived at by the detaining authority that the detenu is a bootlegger is not genuine as the alleged activities of the detenu as a bootlegger do not affect adversely or are not likely to affect adversely the maintenance of the public order. In the submission of Mr. Kapadia the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. In support of his submission, reliance is placed by Mr. Kapadia on the decision of Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City and another, reported in AIR 1989 SC p. 491. In the said case, the Supreme Court has laid down as under:

It may be that the detenu is a bootlegger within the meaning of S. 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the act unless, as laid down in sub-sec. (4) of S. 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect

adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

I have gone through the statements of the witnesses in the present case and in my view, the facts in the present case are identical to the case before the Supreme Court and, therefore, the ratio laid down by the Supreme Court in the case of Piyush Kantilal Mehta (supra) is applicable to the present case. Suffice to say that the witnesses in the present case have alleged that the detenu, by indulging in use of force and violence and by illegal sale of liquor, has created an atmosphere of fear and terror by beating innocent citizens. It is also alleged that the detenu is indulging in anti-social activities and that the activities were against public order. It is true that one of the witness in the instant case has stated that the Police has registered prohibition cases against the detenu. However, on being released on bail, the detenu again started illegal sale of liquor and that there is a possibility of tragedy of mass-death due to liquor. However, this so-called inference on the part of the witness by itself is not sufficient in giving rise to the question of maintaining the public order. Considering the statements of the witnesses, I am of the view that they are vague and general and no reliance can be placed on the same. In view of this observation, I am of the view that the subjective satisfaction arrived at by the detaining authority is not genuine and, therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 3.11.1995 is quashed and set aside. The detenu is ordered to be released forthwith if her detention is not required for any other purpose. Rule is made absolute with no order as to costs.
